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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

078857.0128

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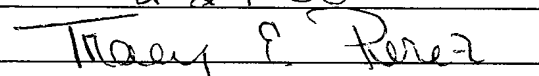
Application Number

10/789,469

Filed

February 27, 2004

Signature

2-27-08  


Typed or printed  
name

Tracy E. Perez

First Named Inventor

Uwe Nigrin

Art Unit

3748

Examiner

Trieu, Theresa

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒


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Registration number 59,143

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Registration number if acting under 37 CFR 1.34

  
Signature

Andreas H. Grubert

Typed or printed name

512.322.2545

Telephone number

February 27, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Uwe Nigrin  
Serial No.: 10/789,469  
Date Filed: February 27, 2004  
Group Art Unit: 3748  
Confirmation No.: 8433  
Examiner: Trieu, Theresa  
Title: **VANE CELL PUMP**

**MAIL STOP – AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**PRE-APPEAL REQUEST ARGUMENTS**

At the time of the Final Office Action mailed November 27, 2007, Claims 1-14 were pending in this Application. Claims 1-14 stand rejected. No claim amendments have been requested in response to the Final Office Action and none are hereby requested. This Request is being filed concurrently with a Notice of Appeal.

**ARGUMENTS**

In the Advisory Action, the Examiner stated that “Applicant should note that the language “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding (In re Hotte (C.C.P.A.) 157 U.S.P.Q. 326).” Advisory Action, page 2, lines 4-5. Applicant respectfully disagrees. The Examiner is clearly misinterpreting *in re Hotte*. According to *in re Hotte*, the C.C.P.A. states that the term “integral” is not necessarily restricted to one piece structures but does not state that two separate pieces can be “integral.”

In particular, the terms “fastening and welding” inherently define that at least an inseparable unit must be formed by the elements. In fact, Applicant uses the term integral consistent with *in re Hotte* because it describes an embodiment of an integral rotor into which spring elements are completely molded, thus, being a part of the rotor. See, specification, page 6, paragraph [0028].

According to the Examiner’s interpretation two elements that are simply pieced together as for example disclosed in *Taguchi* fall allegedly under the term “integral.” Such an interpretation renders the term “integral” completely meaningless as any random elements placed next to each other would be considered integral. As stated above, contrary to the Examiner’s argument, the term “integral” requires that for example two elements to be joined by some means such as fastening and welding. This is clearly not the case in *Taguchi*.

According to *Taguchi*, spring 17 is not fastened by any means to holding element 18. Spring 17 is merely fitted into holding element 18. Thus, no welding or molding is present. The spring elements can be removed at any time.

Most importantly, *Taguchi* does not disclose that the spring elements being an integral part of the rotor. The spring elements are merely fitted into holding element 18. However, holding element 18 is not a rotor. *Taguchi* clearly identifies the rotor with numeral 14. No fastening and/or welding of these elements is disclosed.

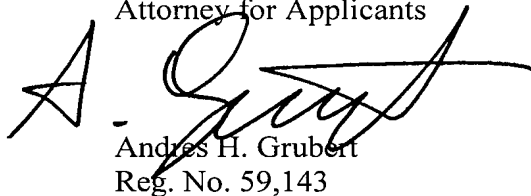
With respect to *Udoni*, the same arguments as presented above apply. Moreover, *Udoni* explicitly discloses that the vane actuating body 23, which are identified by the Examiner as spring elements, is a separate element which therefore cannot be integral with anything. Also, *Udoni* clearly shows the rotor with numeral 3 which again does not have any integral spring elements.

### CONCLUSION

Applicants submit these Arguments in Support of Pre-Appeal Brief Request for Review along with a Notice of Appeal. Applicants authorize the Commissioner to charge Deposit Account No. 50-2148 in the amount of \$510.00 for the Notice of Appeal fee. Applicants believe there are no further fees due at this time; however, the Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayments to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorney for Applicants



Andres H. Grubert  
Reg. No. 59,143

Date: February 27, 2008

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